to sell without so marking, apparently therefore upholding the validity of such a provision. *Haines v. People,* 7 Colo. App. 467. Legislature has the power to pass such laws as it may deem necessary to prevent deception and fraud. *People v. Arensburg,* 105 N. Y. 123.

LEGISLATION—RIGHT OF STATE TO CONTROL SPECULATION IN THEATER TICKETS.—EX PARTE QUARG, 84 PAC. 766 (CALIFORNIA).—*Held,* that a statute, prohibiting any person from selling tickets to theaters or other public places of amusement for a higher price than that originally charged by the management, is in conflict with the State Constitution which secures every person the right of "acquiring, possessing and protecting property" and therefore void. See Comment *ante.*

MANUFACTURERS—LIABILITY FOR DEFECTS IN ARTICLES MADE—WHO MAY SUE.—WATSON V. AUGUSTA BREWING COMPANY, 52 S. E. 152 (GA.).—Action to recover, from defendant, damages for injuries resulting from the swallowing of glass which the defendant had bottled up with a beverage, which he advertised as harmless and refreshing. Defendant contended that he was not liable because there was no privity of relationship between the parties, inasmuch as the beverage had not been sold directly by the defendant to the plaintiff.—*Held,* that the defendant is liable on the ground that he has violated a duty owed by him to the general public.

MASTER AND SERVANT—RAILROADS—ASSUMED RISKS.—PHIPPIN V. MISSOURI PAC. R. CO., 93 S. W. (MO.) 410.—*Held,* that where a switch-tender whose duty is to line switches so as to prevent the cornering of cars, fails to perform that duty properly, and plaintiff, whose duty is to couple such cars, is injured thereby, that plaintiff did not assume such risks, but that the negligence is that of the master.

This case shows a further limitation on the fellow-servant rule as established in *Murray v. S. C. R. Co.,* 36 A. D. (S. C.) 268 (1841) to the effect that an employer contracts with a view to all ordinary risks. This doctrine was followed in *Farwell v. Boston & Worcester Ry. Co.,* 38 A. D. (Mass.) 339, and have been adopted as the general rule. *Randall v. Baltimore & O. R. Co.,* 109 U. S. 478. With the great increase in the relationships of master and servants the hardships of the rule became apparent and statutory changes have been adopted in the various states; Colorado alone having wholly abandoned the rule. Acts of 1893, section 5. This change in Missouri was by a process of paring down the general rule, first, so as to recognize degrees of subordination among servants; *Moon v. Wabash, St. L. & P. R. Co.,* 85 Mo. 588, then reasonable care as to general conditions of employment; *Soeder v. St. Louis, I. M. & S. R. Co.,* 100 Mo. 673, and finally by statute as followed in the principal case by the exemptions as to railroads was abolished.

MASTER AND SERVANT—RAILROADS—DEFECTIVE TRACK.—ST. LOUIS, I. M. & S. RY. CO. V. MIZE, 95 S. W. 488 (ARK.).—*Held,* that a railroad company is under no obligations to its employees to repair its track provided due notice is given of such defect. Battle, J., *dissenting.*

This ruling is based on the doctrine as expressed by the maxim. *Volenti non fit injuria; O'Maley v. South Boston Gaslight Co.,* 158 Mass. 135; the interpretation of which has given rise to two schools. *Walsh v. Whildey, L.*

R., 21 Q. B. Div. 371. One is based on the implied contract from the servant's election to expose himself. *Gleason v. New York & N. E. Ry. Co.*, 159 Mass. 68; *Bonnet v. G. H. & S. A. Ry. Co.*, 89 Tex. 72. The other recognizes the inequality arising from the greater disadvantage of the servant. *Fitzgerald v. Conn. River Paper Co.*, 155 Mass. 155. The latter was applied to virtual compulsion; *Brazil Black Coal Co. v. Hoadlet*, 129 Ind. 327. Later this has been reduced to physical compulsion; *Eldridge v. Atlas S. S. Co.*, 134 N. Y. 187; and therefore leaves the former as the prevailing doctrine. But some courts have held *contra* to the rule as decided in the principal case. *McKee v. C. R. I. and P. Ry. Co.*, 83 Iowa 616.

MASTER AND SERVANT—INJURIES TO SERVANT—CONTRIBUTORY NEGLIGENCE.—ROCCO V. F. A. GILLEPSIE CO., 64 ATL. 118 (N. J.) A servant was injured while engaged in the excavation of a trench.—*Held*, that when the obvious danger increases as the work advances and the servant may protect himself and is injured through his failure to do so, the master is not liable.

The points embodied in this case are luminous for the purpose of illustrating the minute discriminations which the courts are inclined to make between cases arising under the broad maxim, *Volenti non fit injuria*, reinforced by the specific rule that a servant cannot recover for injuries resulting from obvious risks freely accepted. *Fitzgerald v. Conn. River Paper Co.*, 155 Mass. 155. One of the most material variations of this rule is that the risks incurred must have been of such a nature as to have been readily perceived and easily understood. *Dean v. Saint Louis Woodenware Co.*, 80 S.. W. 292 (Mo.). In particular are these nice distinctions discernible in cases like this one, analogously decided, where the injuries were incurred during the progress of work in tunnels or excavations. The caving in of a completed portion of a tunnel or excavation is not one of the risks assumed by a servant. The permanently completed portion of such a tunnel or excavation is an appliance and must be kept in safe and proper condition by the master. *Hanley v. California Bridge and Construction Co.*, 47 L. R. A. 597 (Cal.). Where, however, the place of work is constantly changing, furnishing a fit and safe place to work, is a part of the work itself and is one of the ordinary risks assumed by the servant. *Coal & Mining Co. v. Clay*, 51 Ohio State

MASTER AND SERVANT—OBVIOUS DANGERS—ASSUMPTION OF RISKS BY UNION.—MOSS V. MOSLEY, 41 S. 1012 (ALA.).—*Held*, that a boy between thirteen and fourteen years old, assumed obvious risks, when directed by the defendant's intestate to clean up about a machine, though he had worked at the brickyard only a short time, and this was not his regular job, and no action for his death would lie. Denson, J., *dissenting*.

The weight of authority in the United States is that the master must use due diligence in selection of all servants. *Whittaker v. Delaware, etc., Ry.*, 126 N. Y. 544; *Parke v. N. Y. Cent. Ry.*, 155 N. Y. 215. Some courts allow evidence to show incompetence. *Huffcut on Agency*, p. 352, note 4. Ordinarily a minor employee has no greater right of action than an older person under the same circumstances. *Gilbert v. Guild*, 144 Mass. 60; *McGinnis v. Canada So. Bridge Co.*, 49 Mich. 466. Few courts hold that it is not the employer's duty to instruct a servant, unless information is asked, or that the latter is known to be inexperienced. *No. Pac. Ry. v. Watts*, 63 Texas 549; *Costello v. Judson*, 21 (Hun.) N. Y. 396. A minor assumes obvious risks of his employment. *Mineral Ry. v. Marcus*, 195 Ala. 389. His fear of dis-